

ORDER

Before Shri Sushil Kumar Singla, IFS, Secretary (Environment, Science, Technology & Climate Change) to the Government of Himachal Pradesh -cum-Appellate Authority as constituted under section 28 (1) of Water (Prevention and Control of Pollution) Act, 1974 (Central Act No. 6 of 1974).

Appeal No. 10/2025

M/s Symbiosis Pharmaceuticals Pvt. Ltd.

.....Appellant

versus

Himachal Pradesh State Pollution Control Board (HPSPCB), New Shimla.

.....Respondent

Order pronounced on Dated 06/01/2026.

Present: Advocate Shri Sahil Thakur vice to Adv. Shalini Thakur representative of M/s Symbiosis Pharmaceuticals Pvt. Ltd.

Representatives of HPPCB S/Shri Parveen Chander Gupta, Member Secretary HPPCB, Shri Lalit Thakur, Env. Engineer, Shri Atul Parmar, RO PCB Paonta Sahib, Shri Sandeep Kumar, Law Officer, Shri Naveen, JEE, PCB Paonta Sahib and Shri Tarun Thakur, Asstt. Law Officer.

Heard. The present appeal has been filed under Section 28 of the Water (Prevention & Control of Pollution) Act, 1974 (in short Water Act, 1974) by M/s Symbiosis Pharma Pvt Ltd. on 04.09.2025 for quashing & setting aside of order dated 16.07.2024 passed by the H.P. State Pollution Control Board herein after referred as Board, wherein Environmental Compensation (EC) of Rs. 43,68,750/- was imposed for failure of six number of consecutive samples of Effluent Treatment Plant (ETP) which according to the respondent Board were exceeding the parameters prescribed by environmental norms.

The present appeal has been filed against the order dated 16.07.2024 issued by the Member Secretary, HP PCB. That the Hon'ble NGT in O.A No. 593/ 2017 titled Paryavaran Suraksha Smiti vs. Union of India dated 19.12.2019 has approved the regime for Environmental Compensation (EC) against all the violating units on the basis of Polluter Pay Principle. The formula for the same was devised by CPCB. The



formula is primarily based on the Pollution Index (PI) of the concerned sector, for levying environmental compensation on defaulting industry which is as under:

$$EC = PI \times N \times R \times S \times LF.$$

(EC-Environment Compensation in Rupees, PI- Pollution Index of Industrial Sector, N- Number of days of violation took place, R- A factor in Rupees (₹) for EC, S- Factor for scale of operation, LF- Location Factor.)

Henceforth, the Respondent Board vide order dated 16.07.2024 has directed the appellant to deposit an Environmental Compensation amounting to Rs. 43,68,750 on account of continuous and confirmed violation of 6 nos. of samples from the outlet discharge of the unit.

The respondent Board has filed preliminary objections dated 11.11.2025 against the above said appeal. By way of these preliminary objections /submissions the respondent has submitted that the present appeal is not maintainable on the following grounds:-

- a) Present appeal is not maintainable under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974.
- b) Present appeal is barred by the law of Limitation.

As the respondent Board has raised an issue of Jurisdiction in this matter, therefore, before considering this matter on merits, it is imperative to first adjudicate only on the issue of maintainability of the present appeal.

That the ground reasoned by the Board that this authority has no jurisdiction under the Water Act, 1974 is based on the submission that the Appeal filed under Section 28 of the Water Act, 1974 is not maintainable before the Appellate Authority. An appeal can be filed before the Appellate Authority by any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 of the aforesaid Act.

That the Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 read as under :

Section 28.Appeals.—

(1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,—

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

That an appeal can be filed before the Appellate Authority by any person aggrieved by any order made by the State Board under section 25, section 26 or section 27 of the Act *ibid*. That Section 25-pertains to the *Restrictions on new outlets and new discharges*, Section 26-*Provision regarding existing discharge of sewage or trade effluent* and Section 27-*Refusal or withdrawal of consent by State Board*. That any person aggrieved by the order passed by the State Board to the grant, refusal, or cancellation of consents and related matters passed under section 25, section 26 or section 27 of the Water Act, 1974 can appeal before the appellate authority under Section 28 of the Water Act.

It has been further submitted by the respondent Board that in the present case appeal has been filed for waiver of the orders of Environmental Compensation (EC), which has been levied as a direction passed under Section 33A of the Water Act, 1974 which is appealable only

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before the Hon'ble National Green Tribunal (NGT) as per Section 33B of the Water Act 1974. That section 33A reads as under:

Section 33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct— (a) the closure, prohibition or regulation of any industry, operation or process; or (b) the stoppage or regulation of supply of electricity, water or any other service.]

That the Section 33B was inserted into **The Water (Prevention and Control of Pollution) Act, 1974** by way of an amendment to the National Green Tribunal Act, 2010. The Section 33B is as follows:

Section 33B outlines the right to appeal to the National Green Tribunal (NGT) for individuals aggrieved by specific orders, decisions, or directions made under Section 33A of The Water (Prevention and Control of Pollution) Act, 1974.

The National Green Tribunal Act, 2010.

Section 16. Tribunal to have appellate jurisdiction. –

Any person aggrieved by,-

- a. an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974;
- b. an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974;
- c. **directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;**
- d. an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977;
- e. an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;
- f. an order or decision, made, on or after the commencement of the

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- National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981;
- g. any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986;
 - h. an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;
 - i. an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;
 - j. any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002, may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

The HPSPCB has placed reliance on judgment dated 04.08.2025 passed by Hon'ble Supreme Court of India in Civil Appeal 757-760 of 2013-titled as Delhi Pollution Control Committee (DPCC) vs. Lodhi Property Company Limited. In this matter the Hon'ble Supreme Court of India has distinguished between the scope of Appeals that may be filed under the Water Act, 1974 and the Air Act, 1981 and clearly observed in para-11 as follows:

".....11. The statutory framework lacks clarity, for instance—

- i) *Under the Water Act, any person aggrieved by an order of the State Board under Section 25, 26 and 27 has to approach the Appellate Authority constituted under the Water Act by the State Government. However, the Appellate Authority under the Air Act has jurisdiction over all orders passed by the State Boards.*
- ii) *The State Governments have revisional powers under Section 29 of the Water Act, but do not have similar powers under the Air Act.*
- iii) *An appeal against directions issued by the State Boards under Section 33A of the Water Act lies before the NGT under Section 33B. However, there is no statutory appeal against directions issued by the State Boards under Section 31A of the Air Act...."*

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That M/s Symbiosis Pharma Pvt. Ltd. has submitted rejoinder dated 03.12.2025 defending the maintainability of the Appeal yet, there was no substantial reason to show "sufficient cause" in filing the present appeal. That the Section 33A does not create any exclusive appellate mechanism but it creates a specific appellate mechanism as per Statute.

That the respondent Board's reliance on DPCC Vs. Lodhi Property Co. is not misplaced nor it bars the appeal under Section 28, rather, an appeal under Section 28 is specific to Sections 25, 26 & 27 of the Water Act and is not applicable for directions passed under Section 33A of the Act *ibid*.

That the present matter pertains to the directions passed under Section 33A of the water Act and hence, the issue of no obstante clause does not arise at all as the statutory provisions are to be made applicable as provided under Section 33B of the Water Act.

That the judgment quoted by the respondent Board does not intend to exclude the appellate remedy under Section 28 of the Water Act rather defines the regulatory capacity under Section 33A of the Water Act that lies before the NGT under Section 33B.

After hearing both the parties and in view of the submissions made by them, this Appellate Authority is of the considered view that based upon the submissions made by the respondent Board it is observed that the matter is to be decided primarily with the issue of Jurisdiction first and hence, at present the matter is not considered on merits. Therefore, the appeal filed by the appellant is not maintainable as the scope of Section 28 of the Water Act, 1974 is limited to appeals filed by the persons aggrieved against the orders of the State Pollution Control Boards to the grant, refusal, or cancellation of consents and related matters passed under section 25, section 26 or section 27 of the Water Act, 1974 and hence, an appeal against the directions issued by the State Boards under Section 33A of the Water Act lies before the NGT under Section 33B.

Thus, the present Appeal is not maintainable. Accordingly, the Appeal is dismissed.

Sushil Kumar Singla
06/01/2026
(Sushil Kumar Singla, IFS)

Secretary (EST & CC) to the
Government of H.P.